IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

Sudarshan Kumar Vs. State of Rajasthan & Anr.
S.B. CR. REVISION PETITION NO.324/2004

Against judgment dated 15.05.2004 passed by Sessions Judge, Sri Ganganagar in Criminal Appeal No.80/2003.

DATE OF ORDER :: 5th December, 2006.

PRESENT

HON'BLE MR.JUSTICE SATYA PRAKASH PATHAK

Mr. K.S. Yadav for petitioner.
Mr. V.R. Mehta, Pubic Prosecutor for the State.
Mr. G.R. Goyal for respondent No.2.

BY THE COURT:

Aggrieved by the dismissal of his appeal by the Sessions Judge, Sri Ganganagar vide judgment dated 15.05.2004 passed in Criminal Appeal No.80/2003 affirming the judgment of conviction and sentence dated 20.09.2003 passed by Addl. Chief Judicial Magistrate, Sri Ganganagar in Criminal Complaint Case No.806/2002 convicting the petitioner for the offence under Sec.138 of the Negotiable

Instruments Act, 1881 (for short, hereinafter referred to as 'the Act') and sentencing him to undergo simple imprisonment for two months and to pay fine of Rs.10,000/-, in default to further undergo imprisonment for 15 days, the present petition under Sec.397/401 of Cr.P.C. has been filed.

The facts, in nutshell, are that on a complaint being filed under Sec.138 of the Act, after recording statement under Sec.200 Cr.P.C. of the complainant, a case was registered against the present petitioner. The complainant, in his complaint had stated that the petitioner after purchasing animal feed from him on credit had handed over a cheque for Rs.8397 drawn on Bank of Punjab Limited, Sri Ganganagar branch, however on presentation in bank, the same was dishonoured on account of insufficient funds in the account of the petitioner. Notice to that effect was served on the petitioner but despite that he did not pay the amount which led the complainant to file a complaint against him. The accused petitioner was read over the charge framed against him under Sec.138 of the Act to which he denied and claimed trial. After completion of the

evidence of complainant, accused petitioner was examined under Sec. 313 Cr.P.C. and came out with case that he had already paid the full amount to the complainant even before the cheque date and the complainant had told him to return the cheque after some time. He got examined one Satpal as DW1 in his defence. The learned trial Court framed issues for the decision of the case and on the basis of material placed before it came to the conclusion that against the cheque only a sum of Rs.1500 were paid to the complaint through a receipt and for the rest of amount the petitioner could not submit any proof as such uptil the date of the cheque the whole amount was not paid to the complaint. Ultimately, the trial Court finding the petitioner guilty of the offence under Sec.138 of the Act sentenced him as aforesaid giving him set off for the period already undergone during judicial custody.

The appeal filed by the petitioner challenging the said judgment of conviction and order of sentence dated 20.09.2003 passed by learned Addl. Chief Judicial Magistrate, Sri Ganganagar, was decided by the appellate Court of learned Sessions Judge, Sri Ganganagar, who on

15.05.2004 dismissed the appeal and cancelled the bail bonds of petitioner vide his order dated 15.05.2004. Hence this revision petition.

Both the parties are reluctant to argue the matter and only submit that if the amount of fine deposited in the trial Court is allowed to be withdrawn by the respondent complainant and sentence of imprisonment awarded to the petitioner by the trial Court and affirmed by appellant Court is waived they would be satisfied.

In the facts and circumstances of the case, without going into the merits of the case, however looking to the fact that parties do not want to pursue the matter any more which relate to a meager amount of less than 10,000/- said to be due in petitioner since 08.02.2002 and they have faced the litigations all these years, more so when the complainant himself is not pressing for the sentence of the petitioner, I deem it proper to allow the present revision petition partly to the extent that the sentence awarded to the petitioner by the trial Court and affirmed by the appellant Court shall be reduced to the

period already undergone by the petitioner and the amount of fine deposited in the trial Court Rs.10,000 shall be paid to the complainant. The accused petitioner is on bail. He need not to surrender. The bail bonds are hereby discharged.

In the result, the petition stands partly allowed as aforesaid.

(SATYA PRAKASH PATHAK) J.

/jpa